



REPUBLIC OF KENYA



KENYA LAW
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**Director of Public Prosecutions v Kamau & 4 others (Application
12 of 2018) [2019] KESC 41 (KLR) (30 April 2019) (Ruling)**

Director of Public Prosecutions v Michael Sistu Mwaura Kamau & 4 others [2019] eKLR

Neutral citation: [2019] KESC 41 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

APPLICATION 12 OF 2018

PM MWILU, DCJ & V-P, MK IBRAHIM, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

APRIL 30, 2019

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND

MICHAEL SISTU MWAURA KAMAU 1ST RESPONDENT

ETHICS AND ANTI-CORRUPTION COMMISSION 2ND RESPONDENT

ATTORNEY-GENERAL 3RD RESPONDENT

NATIONAL POLICE SERVICE 4TH RESPONDENT

CHIEF MAGISTRATES COURT MILLIMANI 5TH RESPONDENT

*(Being an application for extension of time to file an appeal and stay of execution
against the Judgment and Orders of the Court of Appeal in Civil Appeal No.
102 of 2016 (Makhandia, Ouko & M'Inoti, JJ.A) delivered on 14th July, 2017)*

The Supreme Court allows an application for extension of time to file an appeal where the Court of Appeal failed to provide certified copies of typed proceedings in good time

The applicant filed the instant application for extension of time to file an appeal out of time and for stay of execution against the judgment and orders of the Court of Appeal. The Supreme Court allowed the application for extension of time to file an appeal where the Court of Appeal failed to provide certified copies of typed proceedings in good time.

Reported by Kakai Toili

Civil Practice and Procedure - appeals to the Supreme Court - timelines for filing appeals - extension of time for filing appeals - circumstances in which the timelines for filing an appeal could be extended - failure of the Court of Appeal to provide certified copies of typed proceedings in good time - whether an application of extension of time to file an appeal at the Supreme Court could be allowed where the Court of Appeal failed to provide certified copies



of typed proceedings in good time -Supreme Court Act, 2011, sections 21(2) and 23(2)(b); Supreme Court Rules, 2012, rules 21, 23 and 53.

Brief facts

The applicant filed the instant application for extension of time to file an appeal out of time and for stay of execution against the judgment and orders of the Court of Appeal. The applicant contended that the delay in filing the appeal was occasioned by the Court of Appeal's failure to provide certified copies of typed proceedings, despite having applied for the same early. The applicant also contended that the intended appeal concerned a substantial outlay of public resources and that unless the orders sought were granted, there was real danger that over 127 pending cases of corruption, bribery and economic crime would be prematurely terminated dealing a blow to the administration of justice and the public interest.

Issues

- i. Whether an application of extension of time to file an appeal at the Supreme Court could be allowed where the Court of Appeal failed to provide certified copies of typed proceedings in good time.

Held

1. Pursuant to the provisions of sections 21(2) and 23(2)(b) of the Supreme Court Act, 2011 and rules 21, 23 and 53 of the Supreme Court Rules, 2012, the instant application satisfied the principles on extension of time set by the court.

Application allowed.

Orders

- i. *The applicant to file its appeal within 14 days from the date of the ruling.*
- ii. *Costs to be in the cause.*

Citations

East Africa

1. *Ambetsa, Wycliffe Oparanya v Director of Public Prosecutions* Petition No 14 of 2016 – (Followed)
2. *Charo, Hassan Nyanje v Khatib Mwashetani & 3 others* SC Application No 15 of 2014 – (Followed)
3. *Munya v Kithinji & 2others* [2014] 3 KLR 36– (Followed)
4. *Principles in Board of Govenors, Moi High School, Kabarak & another v Malcom Bell* Petition No 6 & 7 of 2013- (Affirmed)
5. *Salat, Nicholas Kiptoo Korir v Independent Electoral and Boundaries Commission & 7 others* Application No 16 of 2014- (Followed)

Statutes

East Africa

1. Constitution of Kenya, 2010 article 163(4) – (Interpreted)
2. Supreme Court Act, 2011 (Act No 7 of 2011) sections 21(2); 23(2) (b); 24(1) – (Interpreted)
3. Supreme Court Rules, 2012 (Act No 7 of 2011 Sub Leg) rules 23, 26, 53 – (Interpreted)

RULING

1. Upon perusing the Notice of Motion application dated 31st May, 2018 and filed on 6th June, 2018 for extension of time to file an appeal out of time and for stay of execution against the Judgment and Orders of the Court of Appeal delivered on 14th July, 2017 in Civil Appeal No. 102 of 2016 and brought under the Provisions of Article 163(4) of the Constitution, Section 21(2), 24(1) of the Supreme Court Act, Rules 23, 26 and 53 of the Supreme Court Rules, 2012; and



2. Upon reading the applicant's supporting affidavit and further affidavit sworn by Emily Kamau on 31st May, 2018 and 20th June, 2018 respectively; and
3. Upon considering the written submissions filed by the applicant on 21st June, 2018 wherein it is contended that the delay in filing the appeal was occasioned by the Court of Appeal's failure to provide certified copies of typed proceedings, despite having applied for the same as far back as 14th July, 2017; and
4. Upon further considering the written submissions by the applicant and 2nd, 3rd, 4th and 5th respondents in support of the application, wherein it is contended that:
 1. The intended appeal concerns a substantial outlay of public resources amounting to approximately Kshs 17 billion.
 2. Unless the Orders for extension of time and stay of execution are granted, there is real danger that over 127 pending cases of corruption, bribery and economic crime will be prematurely terminated at this stage, thus severely dealing a blow to the administration of justice and the public interest; and
5. Upon reading the 1st respondent's replying affidavit sworn on 16th July, 2018 and written submissions dated 26th July, 2018 and filed on 16th July, 2018 and 27th July, 2018 respectively, wherein he contends that:
 1. The applicant's decision to charge him afresh before the Magistrates' Court has rendered the intended appeal spent;
 2. the applicant has not moved the Court with clean hands, as the Application is founded on an unconstitutionality;
 3. The applicant has not demonstrated to this Court what efforts it undertook to obtain the said certified copies of typed proceedings;
6. We Have Considered the question at the core of the application viz: whether on the basis of the rival affidavits and written submissions of the parties, the Applicant herein, has made a compelling case for this Court to exercise discretion in its favour and thereby grant the orders sought. By a unanimous decision of this Bench, pursuant to the provisions of Sections 21(2) and 23(2)(b) of the Supreme Court Act, 2011 and Rules 21, 23 and 53 of the Supreme Court Rules, 2012; we make the following Orders:



	Orders	Reasons
1.	The Application dated 31 st May, 2018 is hereby allowed.	The application satisfies the principles set out in the cases of Nicholas Kiptoo Korir Salat v. Independent Electoral and Boundaries Commission & 7 others Application No. 16 of 2014 and Hassan Nyanje Charo v Khatib Mwashetani & 3 Others SC Application No. 15 of 2014; on extension of time by this Court ¾And¾ The principles in Board of Govenors, Moi High School, Kabarak & Another v. Malcom Bell SC petition No 6 & 7 of 2013 as affirmed in Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others Application No. 5 of 2014 and Wycliffe Oparanya Ambetsa v. the Director of Public Prosecutions SC Petition No 14 of 2016.
2.	The Applicant shall file its appeal within 14 days from the date hereof.	
3.	Costs shall be in the cause.	

DATED AND DELIVERED AT NAIROBI THIS 30TH OF APRIL 2019.

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA



JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

